

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:
WACHENDORFF-NEUMANN *et al.*
Appl. No.: 10/573,066
§ 371 Date: October 24, 2006
For: **Synergistic Fungicidal Active
Substance Combinations**

Confirmation No.: 6965
Art Unit: 4161
Examiner: Manu M. MANOHAR
Atty. Docket: 2400.0230000/VLC/CMB

Reply to Restriction Requirement

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

In reply to the Office Action dated June 19, 2008, requesting an election of one invention to prosecute in the above-referenced patent application, Applicants hereby provisionally elect to prosecute the invention of Group I, represented by claims 1-11. In Group I, the Office has further required the election of a single compound from general formula (I) and a single compound from one of the groups 2-23. Applicants elect compound (1-1) (N-(3',4'-dichloro-5-fluoro-1,1'-biphenyl-2-yl)-3-(difluoromethyl)-1-methyl-1H-pyrazole-4-carboxamide) of formula I. Within the compounds from groups 2-23, the Applicants elect group 3, and compound 3-17 (tebuconazole). Claims 1-5 and 12-14 read on the elected species.

This election is made without prejudice to or disclaimer of the other claims or inventions disclosed.

This election is made with traverse. It is respectfully asserted that the Office applied the incorrect standard with respect to restricting the invention.

This application is a National Phase Entry Under 35 U.S.C. § 371, and as such, PCT Rule 13 requiring unity of invention applies. U.S. Patent and Trademark Office regulations provide guidance to Examiners in regard to unity of invention:

(a) An international and a national stage application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept (“requirement of unity of invention”). Where a group of inventions is claimed in an application, the requirement of unity of invention shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression “special technical features” shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

37 C.F.R. § 1.475 (a). See also M.P.E.P. § 1893.03(d) (8th Ed., rev. May 2004).

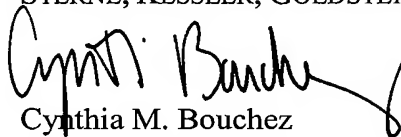
The claims of Group I are directed to synergistic fungicidal active compound combinations, the claims of Group II recite a method of using the compounds of Group I, and the claims of Group III are directed to a process for preparing the fungicidal compositions. Groups I, II and III identified by the Examiner share a special technical feature, i.e., each of the groups recite synergistic fungicidal active compound combinations. Applicants assert that the Groups share unity of invention and should be examined together.

Reconsideration and withdrawal of the Restriction Requirement, and consideration and allowance of all pending claims, are respectfully requested.

It is not believed that extensions of time are required, beyond those that may otherwise be provided for in accompanying documents. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor are hereby authorized to be charged to our Deposit Account No. 19-0036.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.


Cynthia M. Bouchez
Attorney for Applicants
Registration No. 47,438

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1100 New York Avenue, N.W.
Washington, D.C. 20005-3934
(202) 371-2600

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